REMARKS

Claims 10-19 remain for consideration in the above-identified patent application, claims 1-9 having been withdrawn by the present amendment and claims 15-19 are newly introduced.

This amendment is made solely to withdraw claims directed to non-elected subject matter and introduce new claims 15-19 directed to additional embodiments of the elected subject matter. Accordingly, present amendments to the claims introduce no new matter.

Currently amended claim 1 and newly introduced claims 15-19 are fully supported by the present specification and introduce no new matter.

Specifically, support for currently amended claim 1 can be found on p.5 para. 2 of the present specification.

Support for newly introduced claim 15 can be found on p.21 para. 4 and p.25 para. 2 of the present specification.

Support for newly introduced claim 16 can be found on p.25 para. 2.

Support for newly introduced claim 17 can be found on p.25 para. 2.

Support for newly introduced claim 18 can be found on p.26 para. 1.

Support for newly introduced claim 19 can be found on p.26 para. 4.

Accordingly, entry of the above-referenced amendments to the claims is respectfully requested.

I. THE RESTRICTION REQUIREMENT

Restriction of the following inventions was required under 35 U.S.C. § 121:

Group I: Claims 1-9, drawn to an isolated polypeptide.

Group II: Claims 10-14, drawn to an isolated DNA encoding a chimeric isoprenoid synthase, vector and cells thereof.

The inventions of Groups I and II above were stated to be distinct from each other and election of a single group for prosecution on the merits was required.

II. APPLICANT'S RESPONSE TO RESTRICTION REQUIREMENT

Applicant elects the invention of Group II, claims 10-14, drawn to an isolated DNA encoding a chimeric isoprenoid synthase, vector and cells thereof, for prosecution on the merits, with traverse.

The Restriction Requirement is respectfully traversed on the following grounds:

The Examiner has not met the burden for demonstrating the necessity for restriction. M.P.E.P. § 803 requires for restriction both: (1) that the inventions are independent or distinct as claimed; and (2) that there would exist a "serious burden" on the Examiner if all of the claims were examined in one application. These requirements have not been met.

Applicant does not traverse the above-referenced restriction requirement on the basis of a lack of patentable distinctiveness. Applicant does, however, traverse the restriction requirement on the basis of relatedness of the subject matter comprising Groups I-II, as stated below.

Groups I and II

The Examiner had stated that the inventions of Groups I and II are unrelated because allegedly they are not disclosed as capable of use together and they have different designs, modes of operation, and effects. The Examiner had further stated that the isolated

polypeptide of Group I and the isolated DNA encoding the polypeptide, vector comprising the DNA and the cells transformed therewith of Group II differ in their chemical compositions, structure and function.

Applicant does not traverse this restriction on the basis of a lack of patentable distinctiveness between the inventions of Groups I and II. Instead, Applicant respectfully wishes to traverse this restriction due to the fact that the inventive subject matter of Groups I and II is sufficiently related to make restriction unnecessary.

Inventions of Groups I and II are sufficiently related since the DNA of Group II encodes the polypeptides of Group I. Therefore, the inventions of Groups I and II are disclosed as capable of use together.

Furthermore, Applicant respectfully traverses the restriction requirement with respect to Groups I and II because the Examiner failed to meet its burden of demonstrating that examination on the merits of Groups I and II together would result in a serious burden on the Examiner.

MPEP § 803 states two criteria for determining when a restriction is proper: a) the inventions must be independent or distinct as claimed; and b) there would be a serious burden on the examiner if restriction is not required. Moreover, if the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions. MPEP § 803.

Applicant respectfully responds that restriction with respect to Groups I and II is not proper because the Examiner failed to present any reasons why examination of these groups together on the merits would result in a serious burden on the Examiner. No serious burden on the Examiner would result if Groups I and II are examined together on the merits because the subject matter of the inventions is sufficiently interrelated such that no serious burden on the Examiner would exist if all of the claims were examined on the merits. This is because the art involved, if any relevant art exists, largely overlaps. For example, publications describing the isolated chimeric isoprenoid synthase polypeptides of Group I would likely also

discuss the isolated DNA encoding a chimeric isoprenoid synthase, vector and cells thereof of Group II. A search directed to claims of Group I therefore would also likely recover prior art references, if any relevant art exists, potentially relevant to the claims of Group II. Accordingly, the inventions of Groups I and II should be examined together on the merits.

This response is being filed within the statutory one month period for response set forth to expire on August 7, 2006 (Monday) and therefore is believed to be filed in a timely manner. Applicant respectfully invites the Examiner to telephone the undersigned at (858) 200-0587 should the Examiner have any questions concerning this response.

Respectfully Submitted,

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